

TABITHA D.R. OWEN
Smith County Attorney

P.O. Box 365
Smith Center, KS 66967
(785) 282-6689
Fax (785) 282-6553
towen@smithcoattorney.com

**Testimony in Support of HB2029
Provided by Tabitha Owen, Smith County Attorney**

Chairman Jennings and members of the House Corrections and Juvenile Justice Committee, thank you for the opportunity to provide written testimony in support of HB 2029, regarding changes to K.S.A. 21-5414- Domestic Battery.

A few years ago, I prosecuted a defendant charged with Domestic Battery. At the time, I filed the complaint alleging a Class A misdemeanor, due to a prior conviction within the preceding 5 years. In his prior case, the defendant had punched his girlfriend in the face, breaking her jaw in 3 places. She testified at his preliminary hearing with her jaw wired shut. What I learned after the defendant was convicted, at a jury trial, of Domestic Battery, is that his prior conviction for Aggravated Battery with a Domestic Violence designation did not count as a “prior conviction” under K.S.A 21-5414(c)(2)(A) & (B). He was convicted of only a Class B misdemeanor.

It is my belief, and that of the membership of the KCDA, that the legislature intended to increase the penalty for Domestic Battery for repeat and habitual perpetrators. As it stands, the statute fails to apply that penalty to the most violent of these perpetrators who are convicted of more serious person crimes with domestic violence designations. When defendant commits a serious person crime, such as Aggravated Assault, Aggravated Battery, Rape, or even Murder when the victim is an intimate partner, family member, or household member, a domestic violence designation is added to that case to signify that the case involved a particular type of victim and offender. It is these particular offenders who “slip through the cracks” in this section of the Statute. We believe the legislature did not intend to allow more serious domestic violence offenders to be exempt from the more serious penalties that apply to prior convictions of Domestic Battery.

The suggested language in HB 2029 (and SB 6) came out of a proposal that I suggested in the proportionality sub-committee of the Criminal Justice Reform Commission and was approved by the Commission as a whole. I support this language as proposed. The KCDA board suggested changing the language to provide that prior convictions of “person crimes” with a DV designation be counted as a prior conviction rather than “all” crimes with a DV designation as some of those prior crimes may be non-person property crimes.

Thank you for your time and attention.

Respectfully,



Tabitha Owen